of actual offences. The propriety of this is a matter for the authorities concerned. Convictions so obtained are good.

Considerable difficulty was caused in presenting the case in the Court below by section 125 of the Criminal Procedure Code. The investigation was carried on under the auspices of a non-statutory body known as the Corrupt Practices Investigation Bureau. It was, however, treated, rightly or wrongly, as a police investigation for the purpose of that section, with the result that statements made by the appellant were excluded. It was, however, necessary to show that Mr. Waters was not an accomplice, both for avoiding the necessity for corroboration and for safeguarding the reputation of Mr. Waters. To this end a great deal of evidence was given by Mr. Lyle and Mr. Corridon who were his superiors at the material time. In so far as this evidence showed that Mr. Waters acted at all stages under their direction this evidence is in order. At certain times the prosecution did not manage to keep to this difficult and narrow path, and the evidence tended to reveal indirectly what the prosecution had refrained from revealing directly.

As the principal question for the jury was whether Mr. Waters was to be believed or not — if he was believed the case for the prosecution was overwhelming — it did not appear that these defects resulted in any miscarriage of justice. Therefore we dismissed the appeal.

Appeal dismissed.

Solicitors for the appellant: *Battenberg & Talma.*

SIN HWA CHINESE GOODS CO. v. WADHUMAL DALAMAL (trading as DALAMAL & SONS)

[C. A. (Murray-Aynsley C.J. Mathew C.J. (F.M.) and Brown J.) January 20, 1955]

[Singapore—Civil Appeal No. 24 of 1954]

Contract — Sale of goods — Illegality of contract — Whether it vitiates a subsequent contract between the parties.

The parties to the action had entered into a contract for the sale of articles described as "Platinum Fountain Pens." This contract could have been avoided for illegality for the reason that it contravened the Merchandise Marks Ordinance. The defendants (appellants in the appeal) were in default on this contract and the plaintiff issued a writ against the defendants. Subsequently the plaintiff agreed not to proceed with the suit on the understanding that the defendants entered into and complied with the terms of a contract for the purchase of "Lamalad" pens. Subsequently the defendants repudiated this contract and the plaintiff took action against them. At the trial the learned Judge held that the illegality of the first contract attached itself to and vitiated the second contract. He therefore dismissed the claim for damages and also a counterclaim for return of the deposit. The defendants appealed in respect of their counterclaim and the plaintiff gave notice of a cross appeal.

Held: the second contract was a perfectly lawful one and in no sense furthered the unlawful purpose of the first one and therefore the appellants-defendants were liable for breach of contract.

CIVIL APPEAL.

N. A. Christopher for the appellants-defendants.

J. L. P. Harris for the respondent-plaintiff.

Murray-Aynsley C.J. (with whom **Mathew C.J. (F.M.)** agreed) : — This was a claim for damages occasioned by the repudiation of a contract for the sale of goods. There was a counterclaim for the return of a deposit. In the Court below the learned Judge found for the defendants on the claim and for the plaintiff on the counterclaim. The defendants appealed in respect of their counterclaim, and the plaintiff gave notice of a cross-appeal.

The matter begins with a contract for the sale of articles described as "Platinum Fountain Pens" dated March 6th, 1950. The defendants were in default on this contract and the plaintiff issued a writ on June 25th, 1953. On July 8th a second contract was entered into between the parties for the sale of "Lamalad" pens. It was in the following terms :—

" Singapore, 8th July, 1953.

To Messrs. Dalamal & Sons,
106 High Street,
Singapore.

Dear Sirs,

Suit No. 980 of 1953.

"I confirm our agreement to settle the above Suit upon the following terms:—

(1) I agree to take delivery of 560 dozen Lamalad Fountain Pens at the price of $18 per dozen.

(2) Delivery shall be made at my premises at the rate of 100 dozen every ten days (as to which time is to be of the essence of this agreement). The first delivery to be taken by me on the 18th July. 1953. I will pay the price of each consignment on delivery.

(3) So long as I carry out the above terms you will agree to take no further proceedings in Suit No. 980 of 1953.

(4) The deposit of $1,000 paid to you on the 26th June, 1950 will be deducted from the price of the last 60 dozen pens.

(5) In the event of my failing to comply with any of the above terms you are entitled to continue with the said Suit without further notice.

(6) If I comply with all the above terms you will accept the above arrangement in full settlement of your claim against me in the above Suit which you will discontinue, in which event each side will bear its own costs.

I confirm that I am the sole proprietor of Sin Hwa Chinese Goods Co.

Yours faithfully,
sgd. Lam Ting Ying
LAM TING YING."

On July 17th the defendants repudiated this contract. On September 4th, 1953 the plaintiff issued a writ in the present action and on October 28, 1953, the plaintiff discontinued the earlier proceedings.

In the present proceedings pleadings were delivered and on December 1st, 1953, the defendants delivered an amended Defence and Counterclaim. There were two substantial grounds of defence; by paragraph 2 of the Defence the defendants contended that the plaintiff, in the event of a breach by the defendants of the second contract, was thrown back on his remedies on the first contract. We do not agree with this view. It appears that there were two contracts for the sale of goods and in the event of a breach of the second contract, the plaintiff could have proceeded to sue on both contracts. The two transactions were not mutually exclusive. Paragraph 1 of the defence set out the substantial defence. It contended that the first contract was void for illegality and, therefore, that there was no consideration for the second.

In the Court below evidence was given to the effect that there were pens on the market sold with the registered trade mark of "Platignum". It was contended that the mark "Platinum" was a colourable imitation of this. Probably the defendants would, on this ground have had a good defence to the first action whether on the ground that the first contract was void for illegality or otherwise. When the defendants entered into the second contract they believed that they were liable under the first contract. Probably they would not otherwise have entered into the second contract. But that does not mean that there was no consideration for the second contract which was for the sale of pens at so much a dozen. Possibly the second contract could have been attacked on grounds of mistake or misrepresentation, but this has not been done.

At the trial the learned Judge decided the case on another ground, that the illegality of the first contract attached itself to, and vitiated, the second contract. We do not agree with this view. The second contract was a perfectly lawful one and in no sense furthered the unlawful purpose of the first one. We think that the respondents are entitled to succeed on the cross-appeal. The appeal depends on the failure of the cross-appeal. It is therefore dismissed. In the Court below the question of damages on the claim was not considered. We think there must be a new trial confined to the question of damages.

Appeal dismissed.

Cross-appeal allowed and a new trial ordered, limited to the question of damages.

Costs of appeal and cross-appeal and of the trial to respondent. Deposit to respondent.

Brown J. : —I agree. If the contract dated 6th March 1950 for the sale of "Platinum" pens was tainted with illegality for the reason that it contravened the Merchandise Marks Ordinance, no such taint attaches to the contract dated 8th July 1953 for the sale of "Lamalad" pens which did not contravene the Ordinance. But the appellants contended that the second contract provided only one remedy for its breach, namely that the plaintiff should continue with Suit No. 980 of 1953 in respect of the "Platinum" pens. I do not agree that, upon a proper construction of the letter dated 8th July 1953, the parties were imposing any such limitation upon the plaintiff's right of redress in respect of the "Lamalad" pens. By para. 5 the plaintiff is to be entitled to continue with Suit No. 980 of 1953 (in respect of the "Platinum" pens) in the event of the defendants failing to comply with any of the terms of the contract in respect of the "Lamalad" pens. That paragraph does not exclude the plaintiff's right to sue upon the contract for the sale of the "Lamalad" pens. It merely left it open to him to continue with his action in respect of the "Platinum" pens, if he chose to do so.

Appeal dismissed;
Cross-appeal allowed.

Solicitors: *Christopher & Francis; Braddell Bros.*

TAN KIM NEO (f) & ORS. v. TAN TECK BEE & ORS.

[C. A. (Mathew C.J., Murray-Aynsley C.J. (S) and Wilson J.) December 21, 1954.]

[K. L.—F. M. Civil Appeal No. 14 of 1954]

Administration of Estate — Extension of business belonging to estate by administrator — Administrator cannot profit from his trust.

The 1st respondent was the sole administrator of his father's estate. At a meeting between the appellants (daughters of the deceased) and the 1st, 2nd and 3rd respondents (sons of the deceased), it was decided to resuscitate the father's business. Later through the initiative and energy of the 1st respondent the family business was extended. The 1st respondent had intended the extensions to be his own concerns. The question is whether he is bound by his fiduciary position as administrator to hold these extensions in trust for the beneficiaries of the estate.

Held: on the facts the additional businesses were extensions of the original family business. As the 1st respondent is administrator of his father's estate, he is subject to the equitable doctrine that any person in a fiduciary capacity is not allowed to make a profit out of property in regard to which the fiduciary relationship exists.